Smoking in prisons

Should smoking be banned in prisons?

T Butler, R Richmond, J Belcher, K Wilhelm, A Wodak

Consequences and effectiveness

Tobacco smoking is an integral part of prison life and an established part of the prison culture. Tobacco serves a range of functions in prison: as a surrogate currency, a means of social control, as a symbol of freedom in a group with few rights and privileges, a stress reliever and as a social lubricant.

Smoking bans in prison have gained favour in recent times, particularly in North America.[1–3] Fear of legal action by non-smoking prison staff and other inmates appears to be the main driver rather than public health concerns. Prisons are some of the few places in the Western world where smoking is still allowed in enclosed spaces. More recently, however, moves have been made to bring prisons in line with other public institutions through the use of partial or total smoking bans.

While tobacco control strategies have successfully reduced smoking in the general community to below 20% in Australia, the rate among prisoners remains unacceptably high. In 1996 the overall prevalence of smoking among New South Wales (NSW) prisoners was a staggering 88%[4] (compared with 27% in the community[5]) and in 2001 the prevalence was 90%[6] (compared with 20% in the community[7]). Similar rates are reported in overseas prisoner health studies. Smoking is one of the most pernicious public health problems affecting prisons and one that all too often is ignored community based tobacco control strategies.

Reasons for smoking rates remaining high in prisoner populations include high nicotine dependency, mental illness, a lack of smoking cessation programmes available to prisoners, a paucity of evidence regarding best practice for smoking cessation in this population segment, confusion over ownership of the problem between health departments and custodial authorities, and poor access by this group to smoking cessation programmes while in the community.

WHY BAN SMOKING IN PRISON?

Half of those who smoke will die from a tobacco related illness and evidence exists that prisoners die from smoking related cancers at higher rates than the general community.[8 9] Secondhand smoke also threatens the health of non-smokers within the prison system—inmates, prison officers, visitors and the myriad workers attached to prisons.[10] Diseases caused by passive smoking are similar to those caused by mainstream smoking.[11] The risk of dying or having a tobacco related illness is dramatically reduced within a year of stopping smoking. Thus the argument is that by preventing inmates from smoking through a ban, this would improve their health and reduce the longer term costs of treating smoking related illnesses.

To reduce the impact of passive smoking, public buildings and institutions in many Western countries have banned smoking on these premises. Prisons remain an exception to this perhaps because they fall into the category of workplace for staff and ''home'' for inmates. Partial smoking bans are designed to restrict smoking to particular places within a prison, usually, but not always, the cells, designated smoking areas or outside areas. These restrictions attempt to alleviate the civil rights issues around banning tobacco use in an environment where individuals are unable to leave the premises in order to smoke. However, issues around environmental tobacco smoke and occupational health and safety remain.

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In 1993 the US Supreme Court upheld a ruling that exposing a prisoner to environmental tobacco smoke could constitute a ''cruel and unusual punishment'' violating the prisoner's Eighth Amendment rights.[12] Counter claims argued that banning smoking also violates Eighth Amendment or other constitutional rights to smoke. However, these were unsuccessful.[13] One claim asserted that an incident of self-harm was caused by severe nicotine withdrawal. However this was not upheld as prison authorities were able to demonstrate that they had provided smoking cessation programmes.[14]

Locally, there was an increase between 1996 and 2001 in the proportion of NSW non-smoker prisoners who reported sharing a cell with a smoker (20% in 1996[4] compared with 28% in 2001[6]), an increase in the overall proportion of both smoker and non-smoker prisoners who felt the bad effects from others' smoking (31% in 1996[4] compared with 41% in 2001[6]), and a marked increase in the proportion of non-smokers feeling the bad effects of others' smoking (39% in 1996[4] compared with 53% in 2001[6]). We are unaware of any local litigation in relation to smoking in Australian prisons.

WHY NOT BAN SMOKING IN PRISON?

The rush to ban smoking in prisons has occurred in the absence of evidence regarding their overall effectiveness in terms of long term cessation once the individual is released into the community, whether it achieves its main goal of actually stopping prisoners smoking during incarceration, and the consequences arising from tobacco prohibition.

The major impact of smoking bans appears to be the creation of another black market and its associated problems—standovers and intimidation, trading sex for tobacco, smuggling and policing another illegal substance.[15–17] In California recent reports indicate that packets of cigarettes are fetching $125 within the prison system. Prisoners, visitors and prison staff have all been caught smuggling and selling tobacco on the prison black market.[15]

The effectiveness of a smoking ban is evidenced locally in the juvenile justice system where smoking is currently prohibited in centres throughout NSW. According to a recent survey of the state's juvenile (under 18 years) offender population, 86% smoked before coming into custody and 66% of regular (at least weekly) smokers before detention also smoked in custody despite the ban.[18] Cropsey also reports the ineffectiveness of smoking bans in the United States where 76% of prisoners continued to smoke in prison following the ban and 97% smoked when released to freedom.[3 19]

In 1997 Queensland opened the Woodford Correctional Centre in which smoking was banned. Three weeks after it was opened the prisoners rioted and attempted to burn down the new complex. A government inquiry found that the smoking ban was partly to blame.[20]

From a human rights perspective, a ban on smoking in prison represents the

erosion of yet another freedom to an already disenfranchised group. However, this is likely to appeal to those who favour all punitive measures as part of the punishment spectrum. This attitude was reinforced recently when public outcry followed media reports that a high profile prisoner in NSW was allowed to have a bread-toaster in his cell![21]

BANNING AND QUITTING ARE NOT THE SAME THING

Banning smoking is different from quitting. Requiring people to give up smoking while in prison will undoubtedly have health benefits but these benefits are lost if they recommence smoking after release. There is no evidence that simply banning smoking is effective in reducing smoking rates over the long term. Quitting smoking while in prison and maintaining this in the post-release period would undoubtedly save prisoners' money and could be part of the overall rehabilitation process. However, this has yet to be demonstrated.

Demand for quit smoking programmes among prisoners is considerable. According to both the 1996 and 2001 inmate health surveys, around half of all prisoners report needing help to quit smoking. While demand is high, only eight (6%) individuals in 2001 had received help or treatment since coming into custody. Many jurisdictions require prisoners to pay for smoking cessation aides such as nicotine replacement therapy—this is an unrealistic expectation.

Smoking cessation programmes for prisoners are few and far between and little reliable evidence exists regarding their effectiveness if the medical literature is anything to go by. However, in 2003 we undertook a trial at Lithgow Correctional Centre of a multi-component intervention for smoking cessation involving combined nicotine replacement therapy, a pharmacotherapy (bupropion, Zyban), and brief cognitive behaviour therapy. The results were promising with a 40% abstinence rate at 5 months.[22] This trial has evolved into a randomised controlled trial (placebo versus nortriptyline) currently under way in the NSW correctional system.

Health has been remarkably absent from the debate on smoking in prison, but more recently a NSW government response to the inquiry into tobacco smoking in NSW recognised that smoking rates need to be addressed in vulnerable groups such as those with a mental illness, injecting drug users and Aborigines—all of whom are over-represented in prisons. The challenge is likely to be formidable as these groups are probably the most difficult in which to reduce smoking rates, as many report commencing smoking from an early age and are therefore highly dependent on nicotine, have co-occurring mental health and substance misuse problems and lack access to community smoking cessation programmes.

THE FUTURE?

Prisoner populations comprise some of the most disadvantaged groups in the community and are recognised for high levels of smoking. With around nine million prisoners worldwide at any one time (more if younger offenders and those serving part-time and community sentences are included) and significantly more passing through the criminal justice system each year, there is scope for accessing this group and initiating smoking cessation interventions as a means of impacting on the general community.

Smoking bans appear to have little impact on whether prisoners continue to smoke during incarceration and the long term decision to quit smoking following their release to freedom, thereby bringing into question the health benefits of prohibition.

Smoking bans create another black economy in prison and the problems this creates for custodial authorities who have to enforce the ban. These problems impact on all levels of the prison system from the debts accumulated by prisoners to buy contraband tobacco to the staff who have to enforce and police them.

While smoking bans are laudable and have a clear role in the public health arsenal, prisons cannot be viewed in the same light as restaurants, hospitals and office buildings. Clients [prisoners] cannot just pop out for a quick smoke or hold off the urge for a couple of hours; prisoners are locked in their cells for prolonged periods with little to do. By the same token, a non-smoker prisoner cannot leave his/her cell to avoid the harmful effects of his/her cellmate's smoking. The solution appears to be a better management of this problem with guarantees that non-smoker prisoners are not subjected to environmental tobacco smoke in cells, prison transport or communal living areas and that smoker-prisoners have access to free interventions with proved efficacy. The challenge is likely to be considerable and the responsibility should not be left to prison authorities alone.

Perhaps the most important aspect of this issue is that any moves towards smoking bans in prison need to be implemented in tandem with cessation programmes proved to work for this population group and offer the prospect of long term cessation. This approach will also reduce the disorder often caused by hurriedly implemented bans.

What is known about prison smoking bans

Smoking bans are becoming increasingly popular, particularly in North America, mainly because of litigation concerns.

What this paper adds

Increased awareness of the issues involved in implementing smoking bans in prison and evidence that they are ineffective in assisting prisoners to quit smoking. Additionally bans introduce a number of unintended consequences.

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Authors' affiliations
T Butler, National Drug Research Institute, Curtin University, Perth, Western Australia
R Richmond, School of Public Health and Community Medicine, University of New South Wales, Australia
J Belcher, Centre for Health Research in Criminal Justice (Justice Health NSW), Australia
K Wilhelm, A Wodak, St Vincent's Hospital, Sydney, Australia

Correspondence to: Dr T Butler, National Drug Research Institute, Curtin University, GPO Box U1987, Perth 6845, Western Australia; tbutler2@optusnet.com.au

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ELECTRONIC PAGES

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The following electronic only article is published in conjunction with this issue of Tobacco Control.

Scottish court dismisses a historic smoker's suit

L Friedman, R Daynard

The decision in a Scottish smoker's case, *McTear v. Imperial Tobacco Limited*, that there was no scientific proof of causation between the plaintiff's smoking and his death from lung cancer, accepted all of the traditional arguments that the tobacco industry has made throughout the history of tobacco litigation, including that epidemiology is not an adequate branch of science to draw a conclusion of causation, that the tobacco industry has no knowledge that its products are dangerous to consumers, and that, despite this lack of knowledge, the plaintiff had sufficient information to make an informed decision about the dangers of smoking. This case relied on outmoded methods of reasoning and placed too great a faith in the tobacco industry's timeworn argument that ''everybody knew, nobody knows''. Further, the judge found it prejudicial that the plaintiff's expert witnesses were not paid for their services because she was indigent, believing that the lack of payment placed in doubt their credibility and claiming that the paid tobacco expert witnesses had more motive to testify independently because they had been paid, a perverse and novel line of reasoning. The *McTear* case contrasts unfavourably with the recent decision in *United States v. Philip Morris*, a United States decision that found the tobacco industry defendants to be racketeers, based both on the weight of a huge amount of internal tobacco industry documents showing that the tobacco industry knew their products were addictive and were made purposely to increase sales, and on the testimony of expert witnesses who, like those who testified in *McTear*, have made the advancement of the public health their life's work and are not ''hired guns''. The *McTear* case's reasoning seems outdated and reminiscent of early litigation in the United States. Hopefully, it will not take courts outside of the United States 40 more years to acknowledge the current scientific knowledge about smoking and health.

(*Tobacco Control* 2007;**16**:e4) http://tobaccocontrol.bmj.com/preprint/friedman.pdf